COMMISSIONERS PROCEEDINGS
MARCH 16, 2004
CLARK COUNTY, WASHINGTON

The Board convened in the Commissioners' Hearing Room, 6th Floor, Public Service Center, 1300 Franklin Street, Vancouver, Washington. Commissioners Stanton, Pridemore, and Morris, Chair, present.

PLEDGE OF ALLEGIANCE

The Commissioners conducted the Flag Salute.

BID AWARD 2357

Reconvened a public hearing for Bid Award 2357– One Button Bituminous Melter. Mike Westerman, General Services, read a memo from General Services requesting that Bid 2357 be awarded to the sole bidder.

Stanton asked why the sales tax appeared to be calculated at 8.8%.

Westerman explained that the tax was higher in Auburn.

Stanton asked if they would be picking up the product in Auburn, thus, have to pay their sales tax.

Westerman said that in the state of Washington sales tax is paid according to the area where a product is purchased. Outside of the state of Washington, it would default to the local sales tax of 7.7%

Pridemore referenced the bid sheet and pointed out that if you take the total base bid minus the trade-in value, it doesn't equal $117,331.84. He asked Westerman to explain the difference.

Morris tabled Bid Award 2357 so that Westerman could refigure the amount in question.

Commissioners Morris, Stanton, and Pridemore voted aye. Motion carried. (See Tape 84)

PUBLIC COMMENT

Bridget Schwarz, 2110 NW 179th Street, Ridgefield, presented the latest survey from the Fairgrounds Neighborhood Association.

BID AWARD 2357

Reconvened the bid award. Westerman said that upon further review of the spreadsheet, the tax was transposed from the trade-in agreement. He said the price remains the same, and the bid award is correct at the amount of $17,331.84.

Pridemore indicated that the figures still don't add up.

Westerman further explained.

There being no public comment, **MOVED** by Pridemore to award Bid 2357 to Alpine Products, Inc. of Auburn, Washington in the total bid amount of $17,331.84, including allowance for trade-in and Washington State Sales Tax, and grant authority to the County Administrator to sign all bid related contracts. Commissioners Morris, Stanton, and Morris voted aye. Motion carried. (See Tape 84)

PUBLIC HEARING: SUPPLEMENTAL APPROPRIATION

Held a public hearing to consider a 2003/2004 Supplemental Appropriation – Expenditure increase $3,144,473; revenue of $4,007,852; and net impact of $863,379.

Jim Dickman, Budget Office, briefly summarized the four items before the board for approval.

Morris asked Dickman to state for the record the total amount of money that they are spending that is not accompanied by compensating revenues, what the impact is on the general fund, and what it brings the total of the entire biennial budget to.

Dickman responded that there is no request that will impact the general fund – it's all non-general fund requests. He explained that the total request is a little over $3.1 million of which there is a bit over $4 million of revenues to cover it. He said the total for expenditures is $711 million for two years.

There being no public comment, **MOVED** by Stanton to approve Resolution 2004-03-16. Commissioners Morris, Stanton, and Pridemore voted aye. Motion carried. (See Tape 84)

CONSENT AGENDA

There being no public comment, **MOVED** by Stanton to approve items 1 through 11. Commissioners Morris, Stanton, and Pridemore voted aye. Motion carried. (See Tape 84)

PUBLIC HEARING: SUP2003-0010; PSR2003-00058; SEP 2003-00125; EVR2003-00072; ARC2003-00079 EISENHOWER ELEMENTARY SCHOL / NEIGHBORHOOD PARK

To consider an appeal of the Clark County Land Use Hearing Examiner's decision regarding the application for a conditional use and site plan approval for replacement of Eisenhower Elementary School and development of a neighborhood park on approximately 19.56 acres in the R1-7.5 zone district.

The board certified reading the record.

Pridemore stated that he sided with the hearings examiner. He said that in trying to evaluate the appropriateness of extending the road, he switched it around and said that if they were requiring the extension, how would he rule on an appeal to that requirement. Clearly, with rough proportionality there would be no way that he could rule that it would be appropriate to require extension of the road. He said he felt the hearings examiner had ruled appropriately.

Stanton said she tried to figure out if there was a way in Condition of Approval A-23 to clarify the language so that it was clear that you would not be precluding future ingress. She said she never came up with good language that might clarify it.

Lowry said you could also look at the body of the hearings examiner's decision, and it makes it very clear that this is not precluding in any way access to the neighboring property.

Stanton referenced comments regarding the mail going to Salem, Oregon, and how long it takes to receive the hearings examiner's decision. She said that continues to be a concern to her, and in those instances for which timeliness is an issue, they need to make sure that they don't go that route. Stanton said that in regards to the proportionality comment, she couldn't get to a requirement on the redevelopment of the property where it would require that the roadway get constructed without having an argument that says it's not proportional to the impact since they are talking about a neighborhood park, where they intentionally do not provide anything to encourage vehicle access.

Morris stated that she read this as an appeal and as a record that has a whole lot of width, movement for them. First, it is a conditional use permit in which the board and staff have greater latitude than they do on a permitted use. Secondly, she said there was a decision by staff to grant road modification, and there is no factual evidence about the cost of the road improvement proportional to the traffic. There is evidence that Parks is paying traffic impact fees and schools are not, so there's going to be some traffic. She said they are not required to grant road modifications, but they are allowed to under certain circumstances, and this is a public policy question as to whether or not it is wise public policy for them to authorize, in perpetuity, a half-width road. Morris said there is no case law cited in the record or in the appeal rebuttal that she could find that suggests that public property enjoys the same protections under proportionality that private property does.

Lowry responded that the Supreme Court in the benchmark case out of Battle Ground ended up saying that it's not appropriate to look to constitutional rough proportionality in this case if you can get to the issue under RCW 82.02.020, and that RCW clearly is a limitation on governmental authority to exact stuff from development, and it doesn't matter who the applicant is. Lowry further explained.

There was further discussion.

Stanton said the hearings examiner did discuss the CUP and determined that because access to the adjacent property was not eliminated – access was still available – that it was not detrimental to the property in the neighborhood.

Morris said she thought it would be detrimental because they've got a pathway and bikeway, and it doesn't connect to anything at the end. She said there's a clear issue of public health and safety. Morris said just as they pick up the impact fees for the schools on this – so clearly no double extraction – they are asking to pick up the price of the other half of the road because in good public policy they can leave it. The board can either intend to do it themselves or leave it like that forever.

Lowry said there are no other choices that immediately come to mind.

Morris said for that reason she would prefer that the case be sent back to staff to figure out how the road will be finished and if the Public Works Departments wants to say yes, they will finish the road – that's fine, but in this particular case and record she has the ability to wander around because these are legal issues of whether or not the code is being applied appropriately.

Stanton said the question is the development of the property in the neighborhood park doesn't create any vehicular traffic. She remembered a cost relationship of $47,000.
She said it won't develop so there's no need for any vehicular access.

Morris said Parks is paying traffic impact fees. She felt it was bad public policy and the case should go back to figure out how to get the rest of the road done.

Pridemore said it should be looked at from a public policy aspect, but regardless of what comes up there is no way, based on the record, that they were going to get to proportionality. He couldn't justify holding up this project.

Lowry said the current county code requirement for offsite improvement is generally 20 feet so when the Streissguth's came in to develop, they would need to do an improvement beyond their frontage of 20 feet.

Morris said if they are to develop their property they have one of two choices, and they would have to put in improvements all the way along there and have some sort of developer agreement that we would pay them back when the parks part is done, if we ever do.

Lowry said if there is a park improvement that requires site plan approval, the neighborhood park, depending on what improvements are occurring, would not require site plan approval.

Pridemore said in this particular case the issue is clear.

Stanton said she could not find the Hearing Examiner made a mistake. She said the justification for the road modification is there, and the justification for the conditions of approval is there.

Morris didn't agree and said the board doesn't have to find that the Hearings Examiner made a mistake when it comes to the law – it has to be found that he made a mistake when it comes to whether or not he weighed the factual evidence in the record in his findings of fact. This is an interpretation of law. She said now everyone knows that she does not think this is good public policy to have to consign ourselves in perpetuity to a half road or to an eventual takings case.

Stanton said that in an infill development, a 12 foot road is allowed – Here's 30 feet of access so she was not persuaded that the half width road is detrimental.

Lowry said the estimated cost to do the improvement is $45,000- Exhibit 6 – for, he assumed, up until the point where the half width would hit the internal trails within the school.

Stanton said she had read it wrong, and there wasn't a cost.

Pridemore said he didn't remember seeing a cost in the record. He said it would have been helpful if the proportionality calculation had been provided. Pridemore felt there were issues with the Streissguth property, and when the application comes forward it will be struggled with, but it is not relevant to this application. The Hearing Examiner's decision was appropriate.

MOVED by Pridemore to uphold the Hearing Examiner's decision and deny the appeal for Eisenhower Elementary School. Pridemore and Stanton voted aye. Morris voted nay. Motion carried. (See Tape 84)

The Board of County Commissioners' adjourned and convened as the Board of Health.

PUBLIC COMMENT

There was no public comment.

CONSENT AGENDA

There being no public comment, **MOVED** by Board Member Stanton to approve item 1. Board Members Morris, Stanton, and Pridemore voted aye. Motion carried. (See Tape 84)

Adjourned

BOARD OF COUNTY COMMISSIONERS

Betty Sue Morris/s/
Betty Sue Morris, Chair

Judie Stanton, Commissioner

Craig A. Pridemore/s/
Craig A. Pridemore, Commissioner

ATTEST:

Louise Richards/s/
Clerk of the Board

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